

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Norman D. Chester, Jr.,	:	
Petitioner	:	Case No. 2:10-cv-00402
v.	:	Judge Smith
D. Bobby,	:	Magistrate Judge Abel
Respondent	:	

Report and Recommendation

Petitioner Norman D. Chester brings this action for a writ of habeas corpus under 28 U.S.C. § 2254 alleging that his criminal convictions were unlawfully obtained. This matter is before the Magistrate Judge on petitioner's August 23, 2010 motion for summary judgment (doc. 14).

Petitioner argues that the writ should issue because respondent failed to timely file a response to the petition. However, respondent moved for another extension of time to respond, which the Court granted. Respondent filed a return of writ on September 10, 2010 (doc. 19). Further, default judgment cannot be entered against a respondent. A petitioner has the burden of demonstrating that his convictions were unconstitutionally obtained. Consequently, the failure of a respondent to timely respond to a petition is not a ground for habeas corpus relief. *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970); *Byrd v. Sweatt*, 2007 WL 3120440 (W.D. Ky. October 23, 2007). Accordingly, it is RECOMMENDED that petitioner's motion for summary judgment

(doc. 14) be DENIED.

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court.

Thomas v. Arn, 474 U.S. 140, 150-152 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991).

s/Mark R. Abel
United States Magistrate Judge